

WAIVER AND RELEASE AGREEMENT

**BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
AND
DALE R. MONDARY**

This WAIVER AND RELEASE AGREEMENT, hereinafter the "Agreement," is entered into this 24th day of May, 2019, by and between the City of Desert Hot Springs, a municipal corporation located in the County of Riverside, State of California ("City"), and DALE R. MONDARY ("Employee") an individual, his representatives, successors in interest and assigns, as a complete, final and binding settlement of all claims and potential claims, if any, with respect to their employment relationship, with the City and Employee together sometimes referred to as the "Parties" and individually as "Party."

RECITALS

WHEREAS, Employee commenced regular, full-time employment with the City on or about June 22, 2015, as Chief of Police as an "at-will" employee, as set forth in his Employment Agreement ("Employment Agreement"); and

WHEREAS, Employee was placed on paid administrative leave pending an investigation; and

WHEREAS, Employee wishes to resign, effective as of 6:00 p.m. on May 24, 2019 ("Resignation Date"); and

WHEREAS, in order to facilitate Employee's desire to resign forthwith, the City and Employee hereby enter into the following separation, release, and waiver agreement.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS OF AGREEMENT

a. **RECITALS.** The above Recitals are true and correct and are incorporated herein by this reference.

1. SETTLEMENT PAYMENT AND CONSIDERATION

1.1 Upon the expiration of the revocation period, as described in Section 8.1, City will pay to Employee the total sum of ~~Eighty One Thousand One Hundred Eight Two Dollars~~, and 23/100 (\$81,132.23) as consideration, to be paid to Employee in twelve (12) equal bi-monthly installments, beginning on first regular City pay day following the date upon which this Agreement becomes final and binding. Said payment is in exchange for and expressly

contingent on the following:

- 1.1.1 Employee's employment will be terminated as of the date this Agreement becomes final and binding;
 - 1.1.2 Employee agrees to cooperate with any and all governmental agencies or their designated investigator(s), with any and all investigations related to Employee's conduct during Employee's employment, and/or the conduct of others about which Employee has personal knowledge, which occurred during Employee's employment with City, excluding participation that would forfeit the Employee's Fifth Amendment Right against self-incrimination as that Amendment is currently understood and enforced;
 - 1.1.3 Except for communication via the Public Information Officer of the City through the City Manager's Office, Employee agrees that during the pendency of any governmental agency investigation as described in section 1.1.2.1, Employee will not communicate any details of the facts surrounding his resignation of employment, any allegations made against him or the City, this Agreement, or any ongoing investigation with any person, news media, or on any social media account where Employee could be identified. This clause in no way attempts to prevent Employee from speaking to legal counsel or family members about such details;
 - 1.1.4 Employee agrees that the conditions contained in sections 1.1.2 and 1.1.3 of this Agreement are material terms of this Agreement, and any failure to cooperate with investigators pursuant to such investigation, or communication with the news media or on social media regarding the events and/or investigations into matters related to Employee's conduct or the conduct of others about whom Employee has direct knowledge, will constitute a material breach of this Agreement. Quantifying the damages that the City would suffer as a result of a material breach of this part of the Agreement is impossible to determine at the time this Agreement is entered into. Therefore, the Parties agree to liquidated damages in the full amount of the consideration paid by the City should Employee breach any of the material terms contained in this section.
- 1.2 Employee acknowledges and agrees that City has made no representations to him regarding the tax consequences of the monies received by him pursuant to this Agreement. Employee agrees to pay federal and state taxes, if any, which are required by law to be paid with respect to this settlement. Employee further agrees to indemnify and hold City harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against City for any

amounts claimed due on account of this Agreement, and any costs, expenses or damages sustained by City by reason of any such claims, including any amounts paid by City as taxes, deficiencies, levies, assessments, fines, penalties, interest or otherwise.

- 1.3 The foregoing payment to Employee is made in full, final, and complete settlement of any and all claims and causes of action held by Employee against City, including its current and former employees, agents, members, owners, and affiliated entities, including, but not limited to, attorneys' fees and/or expenses and costs which Employee or his attorneys may have incurred.

2. **NO PRECEDENT.** This Agreement is in no way intended, and shall in no way be construed, to restrict rights guaranteed to the City under local, state or federal law, rule, policy or agreement or to establish a precedent in this or any other matter, now or in the future

3. **NO ADMISSION OF LIABILITY.** This Agreement shall not in any way be construed as an admission by the City or Employee of any unlawful or wrongful acts or other liability whatsoever against each other or against any other person. The City and Employee specifically disclaim any liability to, or wrongful acts against each other or against any other person on the part of themselves, any related person or any related predecessor corporation or its or their agents, representatives or successors in interest and assigns.

4. **EFFECTIVE DATE OF RESIGNATION.** At the time of executing this Agreement, Employee shall: submit to the City Manager his written resignation from employment as Chief of Police for the City, with said written resignation being effective and implemented at 6:00 p.m. on May 24, 2019. The written resignation shall provide only as follows, as set forth in Exhibit "A":

"Effective May 24, 2019 at 6:00 p.m., I hereby voluntarily and irrevocably resign from employment as Chief of Police for the City of Desert Hot Springs. Signed: (Employee)."

5. **UNPAID EARNED AND ACCRUED SALARY AND BENEFITS.** City shall pay Employee any and all unpaid, earned and accrued salary and benefits owed to Employee as of the Resignation Date less any deductions and withholdings required or permitted by law in a final check on or before the close of the business day on May 29, 2019.

6. **RESIGNATION BENEFITS.** Employee understands and agrees that Employee shall not be entitled to receive any benefits from the City aside from the payment as provided in this Agreement.

7. **COBRA BENEFITS.** Employee has the option at his own cost to continue his health insurance under the Consolidated Omnibus Budget Reconciliation Act

(COBRA) for eighteen (18) months following the Resignation Date, unless Employee receives other health coverage prior to the expiration of this period in which case City's obligations under this Section shall cease. City's Human Resources Department will coordinate the exchange of information as required by law for Employee to determine his participation in COBRA.

8. RELEASE. Employee represents that he has not filed any lawsuits, complaints, claims, applications, or charges against City or any related person or corporation or against any of its or their past or present officers, director, governing bodies, employees, agents, predecessors, attorneys, division, affiliates, representatives, successors in interest and assigns and/or all persons acting by, through, under, or in concert with any of them, with any state or federal court, or local, state or federal agency, or administrative or quasi-administrative tribunal or person, based on any events occurring prior to the date of execution of this Agreement.

Employee specifically agrees that, in exchange for the consideration provided herein, he shall not in the future file, participate in, instigate, or encourage the filing of any lawsuits, complaints, charges, or any other proceedings in any state or federal court or before any local, state or federal agency, administrative tribunal, quasi-administrative tribunal or person, regarding claims that City has violated any local, state or federal laws, statutes, ordinances, or regulations, or claiming the City has engaged in any tortious, other State, or other Federal based misconduct of any kind, based upon any events occurring prior to the date of execution of this Agreement. Employee further agrees that immediately upon executing this Agreement, he will withdraw in writing and cause to be dismissed with prejudice in its entirety and any and all lawsuits, complaints, charges, or claims against City regardless of whether they are specifically referred to herein.

In addition to the various general releases of liability and agreements to dismiss and/or forego any lawsuits, complaints, charges, or claims against the City, Employee understands and agrees that he is waiving any rights he has, may have had, or may have, to pursue any and all remedies available to his/her under any employment-related cause of action against the City, including but not limited to, and without limitation, any claims for discrimination, harassment, and/or retaliation, claims under the Ralph M. Brown Act (Gov. Code, §§ 54950, et seq.), the Fair Employment and Housing Act (Gov. Code, §§ 12900, et seq.), the California Family Rights Act (Gov. Code, § 12945.2), the Unruh and George Civil Right Acts (Civ. Code, §§ 51, et seq., all provisions of the California Labor Code and any wage orders or similar directives or authorities issued by any federal or state authority having enforcement powers, the Constitution of the United States, the Constitution of the State of California, Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e et seq.), the Age Discrimination Act in Employment Act (29 U.S.C. § 621, et seq.), the Equal Pay Act (29 U.S.C. § 206(d)), the Fair Labor Standards Act (29 U.S.C. § 201, et seq.), the Family and Medical Leave Act (29 U.S.C. § 2601, et seq.), the Employment Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.), Sections 1981-88 of Title 42 of the United States Code (42 U.S.C. § 1981, et seq.), the Americans with Disabilities Act (42 U.S.C. §

12101, et seq.), claims of retaliation or whistle-blowing (including but not limited to California Labor Code § 1102.5, et seq. and Government Code § 12653), claims for breach of any type of contract, including written, oral, or implied, breach of any covenant, promise or representation pertaining to Employee's employment, whether expressed or implied, and all other claims arising in contract, tort, or equity or under any other statute, federal, state, or local statute arising prior to the date of execution of this Agreement, all of which are waived. It is specifically acknowledged by the Parties to this Agreement, that the provisions of this Agreement are confined to the Parties only and are intended to definitely resolve all disputes between the City and Employee and between Employee and any and all present or former City employees and has no evidentiary impact on administrative/civil proceedings that may be brought by the City against present or former City employees.

This Agreement does not limit Employee's ability to bring an administrative charge with an administrative agency, but Employee's expressly waives and releases any right to recover any type of personal relief from the City, including monetary damages or reinstatement, in any administrative action or proceeding, whether state or federal, and whether brought by Employee's or on Employee's behalf by an administrative agency, related in any way to the matters released herein. Furthermore, nothing in this Agreement prohibits Employee from reporting possible violations of law or regulation to any government agency or entity, including but not limited to the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, the Department of Labor and/or the Department of Justice, or making other disclosures that are protected under the whistleblower provisions of law. Employee does not need prior authorization of the City to make any such reports or disclosures and is not required to notify the City that he has made such reports or disclosures.

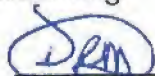
8.1 In accordance with the federal Older Workers' Benefit Protection Act of 1990, Employee acknowledges that he is aware of the following with respect to his release of any claims under the federal Age Discrimination in Employment Act (ADEA): (1) he has the right to consult with an attorney before signing this Agreement, and that to the extent, if any, Employee has desired, he has done so; (2) Employee has twenty-one (21) days to review and consider his release of any ADEA claims, and he may use as much of this twenty-one (21) day period as he wishes prior to signing; (3) for a period of seven (7) days following execution of this Agreement, Employee may revoke his waiver of any ADEA claim and that waiver shall not become effective or enforceable with respect to the claims under the ADEA until the revocation period has expired; (4) this release and waiver will become effective as to any ADEA claim eight (8) days after it is signed by Employee and City, and in the event the Parties do not sign on the same date, then this Agreement shall become effective as to any ADEA claim eight (8) days after the date it is signed by Employee. Thereafter, Employee understands that he does not have any right to revoke his waiver of any claim under the ADEA and that it will be binding upon Employee and City. In addition, it is agreed and understood between the Parties that in the event Employee timely revokes his release/waiver of any age discrimination claims, this Agreement shall have no force or effect and Employee shall not have any right to receive any compensation or payment referred to

herein.

9. CIVIL CODE SECTION 1542 WAIVER. Employee, on behalf of himself, his assigns, successors, agents and representatives, understands and expressly waives any and all rights and benefits conferred upon him by California Civil Code Section 1542, including but not limited to those arising from and/or related to the employment of Employee by the City and/or the resignation of Employee's employment with the City, whether or not heretofore brought before any state or federal court or before any state or federal agency or other governmental entity, as well as claims relating to any conduct or activity which occurs after the date of execution of this Agreement, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind that are known or unknown, or suspected or unsuspected. Employee further represents and warrants that he understands this waiver and that if he does not understand this waiver, he shall seek the advice of a qualified attorney before executing this Agreement.


Initials

10. NO DISPARAGEMENT. Employee agrees that he will not defame or disparage the City or any of its officers, directors, employees, agents or services to any third party, either orally or in writing, except as needed to cooperate with any governmental investigation or legal proceeding. The City agrees that neither it, nor any of its officers, directors, employees, agents or services to any third party, either orally or in writing, except as needed to cooperate with any governmental investigation or legal proceeding shall not defame or disparage the Employee during the course of the investigation(s). Notwithstanding the above, the City and any of its officers, directors, employees, agents or services to any third party, is expressly permitted and may orally or in writing represent employment information and any of the facts and circumstances surrounding Employee's resignation and associated investigation(s) solely limited to any potential employer.

11. RETURN AND PRESERVATION OF CITY PROPERTY. Employee represents that he has removed from his City office and any City vehicles all personal items, materials and effects during the City's regular business hours and returned to the City any and all of City's property in Employee's possession or control, including, but not limited to, the City's records, documents, materials, computer disks, computers,

mobile cell phone devices, and pagers. Employee represents that he has not and further shall not delete, eliminate, remove or destroy any information, data or other electronic records, documents or materials stored on any computer, internet or electronic device or unit owned by the City, and has not done any of these acts since the Resignation Date.

12. CONFIDENTIALITY AND PUBLIC DISCLOSURE OF THIS AGREEMENT. It is hereby agreed that the facts and terms of this Agreement are confidential and will not be disclosed publicly except as may be required by law. The parties acknowledge that the City is a public entity and this Agreement and its terms may be a public record within the meaning of the California Public Records Act, and therefore the City may be required to disclose the Agreement and/or its terms. The City agrees to notify the employee in writing when any City investigation(s), over which the City has the sole and absolute authority, has concluded. City does not have any responsibility to Employee whatsoever to notify him as to the conclusion of any other investigation conducted by any person or entity other than the City. Failure to notify Employee of the conclusion of any investigation will not be considered a breach of this Agreement whatsoever.

13. SEVERABILITY. If any clause, sentence, section or other provision of this Agreement is, for whatever reason, deemed void, unlawful or otherwise unenforceable, then such shall be severed and the balance of this Agreement construed as if the severed language was not a part hereof. Employee agrees and understands that if this Agreement is ever found to be invalid or unenforceable (in whole or in part) as to any particular type of claim or charge or as to any particular circumstances, it shall remain fully valid and enforceable as to all other claims, charges and circumstances. As to any actions, claims, or charges that would not be released because of the revocation, invalidity, or unenforceability of this Agreement, Employee agrees to return any payments, with legal interest, as a prerequisite to asserting or bringing any such claims, charges or actions.

14. NO ADMISSION OF LIABILITY. The Parties agree that nothing in this Agreement is or shall be construed as an admission by either Party of any breach of any agreement or law or any intentional or unintentional wrongdoing of any nature. The Parties agree and acknowledge that neither Employee nor the City has relied upon any representations of each other except as set forth in this Agreement.

15. VOLUNTARY AND INFORMED EXECUTION. The Parties represent that they have relied upon the advice of their respective attorneys, who was/were the attorney(s) of their own choice, concerning the legal and tax consequences of this Agreement, that the terms of this Agreement have been completely read and explained to them by their attorney(s), and that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

16. GOVERNING LAW. The Parties agree that this Agreement shall be governed by and enforced in accordance with the laws of the State of California and all disputes regarding this Agreement shall be brought in the Superior Court of Riverside County, California.

17. ATTORNEYS' FEES AND COSTS. Each party shall bear its/his/her own costs, expenses and attorneys' fees incurred in connection with the administrative and/or legal proceedings resulting in this Agreement, or in connection with any other claims made or investigated by either party against the other in any forum (civil, criminal, administrative or quasi-administrative), and each of the parties hereto expressly waives any claim for recovery of any such costs, expenses or attorneys' fees from the other party. Attorneys for all parties to this Agreement do likewise expressly waive any claim for recovery of costs, expenses and/or attorney's fees from the party(ies) and/or from any source whatsoever. In the event that any Party shall institute any action or proceeding against another Party to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover her or its expenses, including reasonable attorneys' fees, in addition to any other relief to which the Party is found entitled.

18. NO OTHER TERMS. This Agreement contains all of the terms and conditions agreed upon by the parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement, not expressly set forth in this Agreement, are of no force or effect.

19. SUCCESSORS AND ASSIGNS. This Agreement is binding upon, and inures to the benefit of, the parties and their respective successors and assigns.

20. INTERPRETATION OF THE AGREEMENT

20.1 Whenever the context requires, any gender includes all others, and the singular number includes the plural, and vice-versa.

20.2 Any captions in this Agreement are inserted for convenience of reference and do not define, describe, or limit the scope or intent of this Agreement or any of its terms.

20.3 No inference, assumption, or presumption shall be drawn from the fact that a Party or her or its attorney prepared and/or drafted this Agreement.

20.4 Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, or enforceability of the remaining parts, terms, or provisions, shall not be affected, and the illegal, unenforceable, or invalid part, term, or provision shall be deemed not part of this Agreement.

21. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

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IN WITNESS WHEREOF, the Parties hereto have executed this Waiver and Release Agreement.

NOTICE: BY EXECUTING THIS AGREEMENT, I, DALE R. MONDARY, ACKNOWLEDGE THAT I HAVE READ THE FOREGOING AND UNDERSTAND, APPROVE, AND VOLUNTARILY AGREE TO THE TERMS OF THE AGREEMENT SINCE I AM BEING PROVIDED THE ADDITIONAL BENEFITS DESCRIBED IN THE AGREEMENT TO WHICH I WOULD OTHERWISE NOT BE ENTITLED.

CITY OF DESERT HOT SPRINGS

DALE R. MONDARY

Scott Matas, Mayor

D.R. Mondary

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

By:

Exhibit A

Notice of Resignation

Effective May 24, 2019 at 6:00 p.m., I hereby voluntarily and irrevocably resign from employment as Chief of Police for the City of Desert Hot Springs.

D.R. Mondary
DALE R. MONDARY

Date 5-20-2019